

Limited brands

January 3, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1393; RIN No. 7100-AD55; Regulation Z; Truth in Lending

Dear Ms. Johnson:

Limited Brands appreciates the opportunity to comment on the Federal Reserve Board's (the "Board") proposal to revise the open-end credit card rules in response to the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act"). This letter specifically addresses proposed section 226.51, which would require a card issuer to assess a consumer's ability to make required payments before issuing a credit card (the "Proposal"). We are concerned that the Proposal would limit unnecessarily the ability of certain categories of consumers to establish new credit card accounts. We urge the Board to reconsider the Proposal and permit issuers to include household income when assessing a consumer's ability to make required payments.

I. INTRODUCTION

Limited Brands is a global lingerie and personal care retailer with \$8.6 billion in annual sales. We operate 2,665 specialty retail stores in the United States under the brand names Victoria's Secret, Pink, Bath & Body Works, C.O. Bigelow, White Barn Candle Co. and Henri Bendel. Our products also are sold in more than 700 company-operated and franchised locations world-wide, and through the Internet at www.VictoriasSecret.com, www.BathandBodyWorks.com, www.HenriBendel.com and www.LaSenza.com.

The use of credit cards by creditworthy customers is critical to our business. Approximately 42% of our sales involve the use of a credit card, and 16% of that amount involves the use of our proprietary Victoria's Secret Angel card.¹ Approximately 50% of our Angel Card account holders are parents, and approximately 25% are not employed outside the home.

We support an assessment of a consumer's ability to pay when opening a new credit card account or increasing the credit limit on an existing account. However, we are concerned that the Proposal would prevent a large class of potential customers from opening new accounts, particularly non-working spouses, spouses of active duty military personnel, retirees, widows, and divorcees.

¹ The Victoria's Secret Angel card is offered under a partnership between Limited Brands and Alliance Data Systems, Inc.

Additionally, because of the disparate impact of the Proposal on women, we believe the Proposal violates the spirit, if not the letter, of the Equal Credit Opportunity Act.

We respectfully recommend that the Board modify the Proposal to permit issuers to consider a consumer's household income when assessing the consumer's ability to make required payments. As discussed below, such a revision is fully consistent with the terms, purpose, and legislative history of the CARD Act, upon which the Proposal is based.

II. IMPACT OF THE PROPOSED RULE ON OUR CUSTOMERS

The Proposal would have a significant and negative impact on our customers. Most importantly, the Proposal would restrict access to credit for spouses who do not work outside the home. Census data shows that one third of consumers reside in households in which only one individual earns an income.² Currently, non-working spouses in these households are able to obtain credit and engage in commerce on behalf of the household. Victoria's Secrets Angel cardholders are illustrative. As noted above, one-quarter of Angel card holders do not hold jobs outside the home. Yet these individuals, mostly women, have been able to establish credit in their name and develop a credit history. Under the Proposal, it would not be possible for most of these consumers to gain access to the Angel card.

The Proposal also presents challenges for military families. Not only would a military spouse be unable to have his or her spouse's income considered in a credit application, but it would be difficult, if not impossible, to have an active duty spouse co-sign a credit application.

Additionally, retirees, widows, and divorcees would be impacted if they could not demonstrate independent income, even though they have access to household income from a spouse's pension, life insurance or divorce settlement.

Given the disparate impact of the Proposal on women, we are concerned that the Proposal violates the spirit, if not the letter, of the Equal Credit Opportunity Act ("ECOA"). ECOA was enacted, in part, to prevent creditors from discriminating on the basis of sex or marital status.³ By requiring a demonstration of "independent" income, non-working spouses, the vast majority of whom are women, would no longer be able to obtain a credit card in their own name. This was the very result that ECOA was enacted to prevent.

The Board has acknowledged this potential conflict in the preamble to the Proposal and stated that compliance with the Proposal would not constitute a violation of ECOA or Regulation B, which implements that statute. While this safe harbor is necessary if the Proposal is finalized in its current form, we believe a better solution would be to permit consideration of household income under the general ability to pay standard.

² In 2009, approximately one-third of families had only one family member in the work force during the preceding 12 month period. U.S. Census Bureau 2009 American Community Survey. http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2009_1YR_G00_S2302&-geo_id=01000US&-ds_name=ACS_2009_1YR_G00_&-_lang=en&-redoLog=true&-format=&-CONTEXT=st.

³ Section 502 of ECOA ("The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status.") See also 15 U.S.C. 1691(a)(1).

III. THE CARD ACT PERMITS CONSIDERATION OF HOUSEHOLD INCOME FOR CONSUMERS OVER AGE 21

The Proposal is based upon two provisions in the CARD Act. Section 301 of the CARD Act establishes a special “ability to pay” standard for consumers under the age of 21. That standard requires a consumer under the age of 21 to have a parent or guardian co-sign for the account or demonstrate an “independent means” for repaying the account.⁴ Separately, section 109 of the CARD Act establishes a general “ability to pay” standard for all consumers.⁵ The general standard requires a card issuer to consider the ability of a consumer to make required payments prior to opening a new credit card account.

The Board has given a common interpretation to these two standards. The Board has interpreted the general ability to pay standard to require an assessment of a consumer’s “independent” ability to make required payments, even if the consumer is over the age of 21. While these two standards are intended to achieve a common purpose (i.e., ensuring a consumer’s ability to repay), they are crafted differently. The phrase “independent means” appears only in the special standard for consumers under the age of 21. It is intended to ensure that younger consumers have an ability to repay if a parent does not co-sign an application.

The general standard, on the other hand, is written to permit the Board to recognize the importance of household income in a consumer’s ability to repay. Most consumers over the age of 21 live in households and pool income and assets. Checking and savings accounts typically are held in joint names, even if the funds held in those accounts are based upon a single income. These joint resources can be used to meet payment requirements. Household obligations also typically are held in joint names. Under the Proposal, however, a creditor could not consider joint income and assets when opening an account, but would be required to consider joint mortgage and other credit obligations of an applicant. In its current form, the Proposal is inconsistent with the general purpose of the standard to ensure repayment of credit.

The legislative history of the CARD Act supports consideration of household income in the general ability to pay standard. The ability to pay standard for the general population was added to the CARD Act during the Senate floor debate, after the Act passed the House without this provision. While there was no floor debate or statements on this specific provision, the amendment process shows that the Senate knowingly and purposefully chose not to apply the special standard to consumers over the age of 21.

When the Senate began consideration of the CARD Act, the pending text included the special ability to pay standard for consumers under the age of 21, but not the general standard. During the debate on the bill, Senator Robert Menendez introduced an amendment that would have made the special standard applicable to all consumers, regardless of age. More specifically, Senator Menendez offered language which would have made the special standard apply to all consumers by renaming the section “Extensions of Credit to Consumers” and removing all references to age.⁶ The Senate never voted on this amendment. Instead, the Senate approved a separate set of amendments sponsored by

⁴ Section 127(c)(8)(B)(ii) of TILA; 15 U.S.C. 1637(c)(8)(B)(ii).

⁵ Section 150 of TILA; 15 U.S.C. 1665e.

⁶ 111 Cong. Rec. S5532 (May 14, 2009).

Senators Chris Dodd and Richard Shelby that made many changes to the underlying text, including the addition of the general ability to pay standard. In other words, the Dodd/Shelby amendment added the ability to pay provision which is in the final Act and did not add Senator Menendez's amendment.⁷ Senators Dodd and Shelby's amendment was approved by unanimous consent and included in the final text of the bill, and Senator Menendez voted in favor of the bill.

In summary, the Senate had the opportunity to apply the "independent means" standard to all consumers and declined to do so. Instead, the agreed upon language keeps that more stringent standard applicable to only consumers under the age of 21. The language used and the amendments proposed show that Congress deliberately chose different standards for underage consumers than those for the general population. Therefore, we urge the Board to revise the Proposal and permit credit card issuers to include household income when assessing a consumer's ability to pay.

IV. RECOMMENDATION

Given the significant and negative impact of the Proposal on consumers, we urge the Board to revise the Proposal by eliminating the "independent means" requirement from the general ability to pay standard and permitting credit card issuers to consider a consumer's household income under that standard. Such a revision is consistent with both the purpose and legislative history of the provisions in the CARD Act upon which the Proposal is based.

Congress clearly envisioned that only underage consumers should be subjected to the more stringent "independent means" requirement. The Board has the flexibility to allow the consideration of household income for the general population of consumers. This approach would be more consistent with current law and practice and result in a fair treatment of non-working spouses and others who do not have an independent income.

Sincerely,



Timothy J. Faber
SVP, Treasury

⁷ 111 Cong. Rec. S5625-6 (May 19, 2009).